

1 **BEFORE THE ARIZONA REGULATORY BOARD**
2 **OF PHYSICIAN ASSISTANTS**

3 In the Matter of

4 **TROY S. MCCARTHY, P.A.**

5 Holder of License No. **2118**
6 For Practice as a Physician Assistant
7 In the State of Arizona.

Case No. PA-03-0025B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR A
DECREE OF CENSURE**

8 The Arizona Regulatory Board of Physician Assistants ("Board") considered this
9 matter at its public meeting on May 18, 2005. Troy S. McCarthy, P.A. ("Respondent")
10 appeared before the Board with legal counsel Don Stevens for a formal interview
11 pursuant to the authority vested in the Board by A.R.S. § 32-2551. The Board voted to
12 issue the following findings of fact, conclusions of law and order after due consideration
13 of the facts and law applicable to this matter.

14 **FINDINGS OF FACT**

15 1. The Board is the duly constituted authority for the regulation and control of
16 physician assistants in the State of Arizona.

17 2. Respondent is the holder of license number 2118 for the performance of
18 healthcare tasks in the State of Arizona.

19 3. The Board initiated case number PA-03-0025B after receiving a complaint
20 alleging Respondent inappropriately obtained samples of a prescription drug, Viagra,
21 from his wife, a physician assistant, and provided them to the husband of a patient under
22 his care as well as to his then supervising physician. The husband of Respondent's
23 patient then gave the drug to others.
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1 4. Respondent acknowledged his mistakes and testified they would not be
2 happening again. Respondent testified that one year after the incidents his former
3 employer filed a lawsuit against him and his wife to claim damages. Respondent stated
4 when he filed his initial response with the Board he did not fully disclose he had given the
5 Viagra to his former employer because he believed his former employer could use that
6 information in the civil suit. Respondent noted his attorney at the time did not advise him
7 that anything he told the Board was confidential and could not be used in the civil
8 litigation.
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10 5. Respondent testified he later decided to supplement his statement and give
11 full disclosure of the facts. Respondent testified he has learned a great deal from this
12 experience, his actions were unquestionably wrong and he deeply regrets them.
13 Respondent stated it was wrong of him to give prescription medication to a non-patient or
14 even take the prescription himself before seeing a physician. Respondent testified he did
15 not create a chart, but did do a history before giving the drug to his patient's husband.
16 However, Respondent did not do a physical examination before giving the medication.
17 Respondent also testified that giving the initial incorrect statement to the Board was also
18 extremely wrong. Respondent stated he believed he would never be in front of the Board
19 again on any matter and he is a good and conscientious provider, dedicated to his
20 patients and his practice. Respondent noted he has full support of the physicians he
21 works with and is willing to accept whatever sanction the Board deems appropriate.
22

23 6. Respondent was asked if in the normal course of his practice he would rely
24 solely on the representations of the two men he gave the drug to that they had taken the
25 drug in the past without any problem. Respondent testified he would not. Respondent

1 testified he would have done other things in his normal practice before prescribing or
2 dispensing a prescription medication. Respondent was asked what else, besides taking
3 a history, would he have done before dispensing the drug. Respondent testified he
4 would have done a full physical examination, including vital signs – pulse, respirations,
5 temperature, blood pressure – and listening to the heart and lungs while examining the
6 patient. Respondent testified he did do a history on the husband of his patient.
7 Respondent also clarified that he received no remuneration for providing the medication.
8

9 7. Respondent was asked if his supervising physician requested Respondent
10 obtain the drug from his wife. Respondent stated he did not. Respondent was asked
11 how then did Respondent's supervising physician know Respondent had the drug.
12 Respondent testified he and his supervising physician had been talking in the office one
13 day and Respondent told him he had taken the drug and developed a real bad headache
14 from it and would not be taking it again. The supervising physician then said he would
15 take the remaining pills and asked Respondent to give them to him. In response to a
16 question from the Board Respondent clarified that the supervising physician knew he had
17 obtained the drug from his wife. The Board clarified with Respondent that the
18 complainant in this case was his former supervising physician. Respondent indicated
19 that three previous physician assistants employed by the former supervising physician
20 have been subjected to complaints filed by him.
21

22 8. Respondent was asked if his employment had been terminated or he had
23 resigned his position with his former supervising physician. Respondent testified the
24 answer to the question depends on who you talk to. Respondent testified that one night
25 the ceiling in his house had collapsed because the air conditioner drip pan had tipped

1 and soaked the ceiling. Respondent called the repair people and they said they would be
2 out to his house later the same day. Respondent made arrangements for them to come
3 in the afternoon because he had surgeries scheduled for the morning. Respondent
4 called the office manager at 6:00 a.m. and explained the situation and asked if he could
5 re-schedule his three afternoon patients. The office manager said it would be no
6 problem. When Respondent went into the office and explained the situation his
7 supervising physician became irate and by the time Respondent left for the day he had
8 been given a letter changing his status from a salaried employee to an hourly employee
9 at \$25.00 per hour. Respondent testified he went home and when he came back in the
10 next morning he told the supervising physician he considered his salaried position
11 eliminated and did not accept the hourly position. Respondent then left.
12

13 9. Respondent was asked if the supervising physician and the husband of
14 Respondent's patient knew each other. Respondent testified they were good friends.
15

16 CONCLUSIONS OF LAW

17 1. The Board on the Regulation of Physician Assistants possesses jurisdiction
18 over the subject matter hereof and over Respondent.

19 2. The Board has received substantial evidence supporting the Findings of
20 Fact described above and said findings constitute unprofessional conduct or other
21 grounds for the Board to take disciplinary action.

22 3. The conduct and circumstances above constitute unprofessional conduct
23 pursuant to A.R.S. § 32-2501(21)(i) ("[p]rescribing or dispensing controlled substances or
24 prescription-only drugs for which the physician assistant is not approved or in excess of
25 the amount authorized pursuant to this chapter"); 32-2501(21)(j) ("[a]ny conduct or
practice that is harmful or dangerous to the health of a patient or the public"); 32-

1 2501(21)(p) ("[f]ailing or refusing to maintain adequate records on a patient"); 32-
2 2501(21)(s) ("[p]rescribing, dispensing or administering any controlled substance or
3 prescription-only drug for other than accepted therapeutic purposes"); 32-2501(21)(bb)
4 ("[k]nowingly making a false or misleading statement on a form required by the board or
5 in written correspondence or attachments furnished to the board); and 32-2501(21)(kk)
6 ("[p]rescribing, dispensing or furnishing a prescription medication or a prescription-only
7 device as defined in section 32-1901 to a person unless the licensee first conducts a
8 physical examination of that person or has previously established a professional
9 relationship with the person...)."

10 ORDER

11 Based upon the foregoing, IT IS HEREBY ORDERED that:

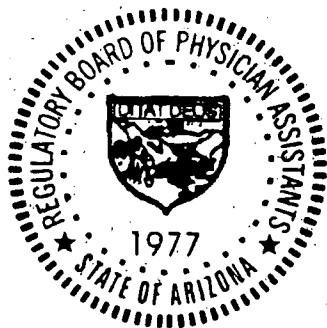
12 Respondent is issued a Decree of Censure for inappropriately dispensing a
13 prescription-only medication and for the remaining violations listed above.

14 RIGHT TO PETITION FOR REHEARING

15 Respondent is hereby notified that he has the right to petition for a rehearing.
16 Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed
17 with the Board's Executive Director within thirty (30) days after service of this Order and
18 pursuant to A.A.C. R4-17-403, it must set forth legally sufficient reasons for granting a
19 rehearing. Service of this order is effective five (5) days after date of mailing. If a motion
20 for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after it
21 is mailed to Respondent.

22 Respondent is further notified that the filing of a motion for rehearing is required to
23 preserve any rights of appeal to the Superior Court.
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1 DATED this 7th day of February, 2006.



ARIZONA REGULATORY BOARD OF
PHYSICIAN ASSISTANTS

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TIMOTHY C. MILLER, J.D.
Executive Director

12 Original of the foregoing filed this

13 8th day of FEBRUARY, 2006 with:

14 Arizona Regulatory Board of

15 Physician Assistants

16 9545 East Doubletree Ranch Road

17 Scottsdale, Arizona 85258

18 Executed copy of the foregoing

19 mailed by U.S. certified mail this

20 8th day of FEBRUARY, 2006, to:

21 Don Stevens

22 Shughart Thomson & Kilroy PC

23 3636 North Central Avenue – Suite 1200

24 Phoenix, Arizona 85012-0001

25 Executed copy of the foregoing

mailed by U.S. mail this

8th day of FEBRUARY, 2006, to:

Troy S. McCarthy, P.A.

Address of Record